

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

OLIVER LYONS,

Plaintiff,

v.

C.A. No. 04-380T

ASHBEL T. WALL, et al.

Defendants.

**ORDER SUSTAINING PLAINTIFF'S OBJECTION TO
MAGISTRATE JUDGE'S DECISION**

Plaintiff Oliver Lyons has filed an objection, pursuant to Fed. R. Civ. P. 72(a), to a Memorandum and Order signed by Magistrate Judge Hagopian on June 27, 2006, denying two motions to compel that Lyons had filed in response to Defendants' objections to his discovery requests. According to the Memorandum and Order, Magistrate Judge Hagopian denied the motions to compel because Lyons failed to certify in each that he had attempted, in good faith, to secure from Defendants the answers and materials he sought without court action.

While it is true that Fed. R. Civ. P. 37(a)(2)(B) generally requires a party who files a motion to compel to include such a certification, this case presents an unusual situation in that Lyons, who is proceeding *pro se*, currently is incarcerated, presumably with limited access to a telephone or other means of conferring directly with defense counsel. Moreover, in light of Defendants' responses to the interrogatories and requests for

production that underlie Lyons' motions to compel--which consisted almost entirely of objections--it seems clear that any attempt by Lyons to confer with defense counsel would be futile.

For these reasons, Lyons' objection is hereby SUSTAINED, the June 27th Memorandum and Order is hereby SET ASIDE, and the matter is hereby REMANDED to Magistrate Judge Hagopian for a decision on the merits on each of Lyons' motions to compel.

IT IS SO ORDERED:

Ernest C. Torres
Ernest C. Torres
Chief Judge

Date: 8/16/06